tion the company is clearly not acting in the best interests of its shareholders but is, it seems to me, out to shield a former director against whom a *prima facie* case of misfeasance on a very large scale has been made out.

The jurisdiction of the court to grant an interlocutory injunction is governed by equitable principles and the court must have regard to the conduct and dealings of the parties. The defendant company has been resisting inspection of its books by the plaintiff even when he was its director. He was not allowed to inspect with the aid of his accountant although the law gave him a clear right to do so. In consequence the plaintiff was obliged to apply to this court for inspection and again that application was opposed by the company for no valid reason. In my view the conduct of the company has been throughout unreasonable.

For these reasons, both on the law and the facts, the plaintiff is, in my judgment, entitled to have the *ex parte* injunction granted to him on the 18th August 1972 continued until Curran completes his inspection.

The question that next arises is, should there not be a time limit for Curran to complete his investigations. In my opinion, in fairness to the company, there should be such a limit. Counsel for the plaintiff has suggested that Curran should be given time till the end of this year to complete his enquiry. I consider that a reasonable period and accordingly there shall be an order that the injunction dated the 18th day of August 1972 do continue till the 31st December 1972.

I must now deal with the submission that the second defendant has been wrongly joined in these proceedings. The only reason advanced by the plaintiff for joining him is that he stopped Curran from looking at the books of the company after the plaintiff was removed from directorship. The second defendant admits this and says that he did it in his capacity as the secretary of the defendant company and that he acted in pursuance to legal advice given to the defendant company. It is plain therefore that in preventing Curran from looking at the books of the company, the second defendant was acting on the instructions of the defendant company. There is no evidence that the second defendant did anything on his own, independently of the company's instructions. Under the circumstances, it seems to me, that there were no grounds at all for the plaintiff to join the second defendant in these proceedings. He has been wrongly joined and therefore there shall be an order that his name be struck out.

The plaintiff will pay the second defendant's costs of these proceedings as taxed. The first defendant will pay the plaintiff's costs as taxed.

Order accordingly.

Solicitors: *Drew & Napir; P. T. Wong & Co.; Donaldson & Burkinshaw.*

SIVARAJAN v. SIVARAJAN

[D.C.A. (Winslow J.) October 19, 1972]

[Singapore — District Court Appeal No. 5 of 1971]

Conflict of Laws — Divorce — Foreign decree — Jurisdiction — Domicile — Women's Charter (Cap. 47), ss. 3, 60(1)(c) & 80.

Family Law — Maintenance — Divorce obtained from a foreign court — Divorce not recognised — Women's Charter (Cap. 47), s. 60(1)(c).

This was an appeal by the husband against the judgment of the magistrate ordering maintenance to be paid by him to the respondent with effect from June 1, 1970 under section 60(1)(c) of the Women's Charter for neglecting to provide maintenance for her as his wife. The appellant contended that although he married her in Tellicherry India in 1966, he had obtained a divorce from her in the Court of the Munsif at Tellicherry on January 2, 1970. The issue before the magistrate was whether she was still the wife of the appellant and whether he had neglected to maintain her and the magistrate decided that the respondent was still married to the appellant and that the divorce granted by the Court of the Munsif could not be recognised in Singapore. The magistrate found that the appellant was domiciled in Singapore on the relevant date.

Held, dismissing the appeal: (1) the mere fact that a marriage was celebrated in Tellicherry would not be sufficient to create a real and substantial connexion between the appellant and Tellicherry;

(2) by virtue of section 80 of the Women's Charter jurisdiction with regard to the dissolution of such marriage as in this case rested with the High Court of Singapore. The court in Singapore therefore could not recognise the purported Indian divorce;

(3) in the circumstances there was no ground to interfere with the magistrate's order for maintenance.

Indyka v. *Indyka*[1] distinguished.

Case referred to:-

(1) *Indyka* v. *Indyka* [1967] 2 All E.R. 689.

DISTRICT COURT APPEAL.

J. B. Jeyaretnam for the appellant.

Arul Chandran for the respondent.

Winslow J.: In this appeal against the judgment of the 8th Magistrate dated 1st March 1971 ordering maintenance in the sum of $200 per month to be paid by the appellant to the respondent, with effect from 1st June 1970, under section 60(1)(c) of the Women's Charter (Cap. 47) for neglecting to provide maintenance for her as his wife, the appellant contended that although he married the respondent in India in 1966 he obtained a divorce from her in the Court of the Munsif at Tellicherry, Kerala State, on 2nd January 1970.

The sole issue before the magistrate was whether she was still the wife of the appellant and whether he had neglected to maintain her and he decided that the respondent was still married to the appellant and that the divorce granted by the Court of the Munsif on 2nd January 1970 could not be recognised in Singapore.

The magistrate found that the appellant was domiciled in Singapore on that date.

By virtue of the provisions of section 80 of the Women's Charter therefore, jurisdiction with regard to the dissolution of such a marriage as this which was celebrated on 18th April 1966 in Tellicherry, Kerala State rests with the High Court of Singapore.

There is no doubt that the marriage celebrated at Tellicherry between the parties in 1966 is a valid monogamous marriage. It was celebrated under section 4 of the Madras Marumakkathayam Act. By virtue of section 6 of that Act a marriage under section 4 may be dissolved by an order of dissolution as provided under section 7 of that Act whereby a husband may present a petition for such dissolution if the place where the marriage was contracted is situated within the local limits of the jurisdiction of the Court of a District Munsif.

The divorce of 2nd January 1970 was granted on this basis under section 9 of the Marumakkattayam Act which provides that:

"the court shall, on being satisfied after such inquiry as it thinks fit that a marriage which is valid under section 4 was contracted between the parties, by an order in writing declare the marriage dissolved".

The right conferred by this Act to obtain the dissolution of a Hindu marriage is not affected by the Hindu Marriage Act, 1955 of India by virtue of section 29(2) of that Act.

It is quite clear that if the appellant had merely been a resident here who had obtained a divorce in India on the basis of his being domiciled there, the courts in Singapore would recognise such a divorce. That, however, is not the position in this case. The Court of the District Munsif, Tellichery, Kerala State, did not purport to exercise jurisdiction on the ground of his being domiciled there. The court clothed itself with jurisdiction because the place where the marriage was celebrated lay within its jurisdiction. It is a fact found by the magistrate that the appellant at the time he obtained his divorce in India was in fact domiciled in Singapore. The court in Singapore therefore cannot recognise such a divorce.

Counsel for the appellant invoked the relaxations to the rule based on domicile enunciated by the House of Lords in England in *Indyka* v. *Indyka*[1] to the effect that an English court would recognise a divorce granted on the basis of nationality by the court of a foreign country with which the petitioner could be said to have a real and substantial connexion.

So far as I am aware, no cases have arisen to this day in Singapore where relaxations such as these to the domicile test have been followed. It should be noted that in England no statutory provision exists such as that contained in section 80 of the Women's Charter making domicile the test for jurisdiction in divorce, the domicile test in England being only judge-made law.

It is also clear that the mere fact that a marriage was celebrated in Tellicherry would not be sufficient to create a real and substantial connexion between the appellant and Tellicherry.

Even if it can be said that, notwithstanding the statutory requirement of domicile as the test for jurisdiction in divorce, regard should be had to the principle enunciated in *Indyka's* case relating to real and substantial connexion between the parties and the foreign jurisdiction, which the appellant himself never raised before the magistrate, it is quite clear from the facts found by the magistrate in this appeal that the appellant did not, when he obtained this divorce on 2nd January 1970, possess such real and substantial connexion. He happened to be there on a short visit when he was advised by relatives that he could obtain a divorce there. It must have been quite obvious to him then that if he had commenced proceedings in Singapore he would have been unable to establish any of the grounds for seeking dissolution of his marriage to the respondent whereas, in India, under the Marumakkattayam Act, no grounds were required to be established.

There is nothing in the record to show that, on 2nd January 1970, he possessed anything other than a Singapore domicile and the facts strongly show a Singapore domicile even to this day. He is a Singapore citizen and the magistrate found, in my view quite correctly, that he had not rebutted the presumption of a Singapore domicile which arises under section 3 of the Women's Charter.

It is quite clear from all the evidence that both parties after their marriage in India came to Singapore with a view to setting up a matrimonial home here which in fact they did until matters came to a head between them which resulted in the appellant's failing to maintain her and to provide a home for her as intended.

Since the purported Indian divorce cannot be recognised it follows that the consequential order for maintenance made in India follows the same fate.

I cannot see any ground for interfering with the magistrate's order for maintenance.

The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.

Solicitors: *J. B. Jeyaretnam & Co.; Rodyk & Davidson.*

HOTEL BILTMORE & ORS. v. CENTRAL PROVIDENT FUND BOARD

[O.C.J. (Winslow J.) November 7, 1972]

[Singapore — Originating Summons No. 165 of 1972]

Provident Fund — "Wages" — Whether "service charges" are "wages" as defined in the Central Provident Fund Act (Cap. 121), s. 2.

The question raised in this case was whether payments of certain monies distributed to the applicants' employees on a points or share system out of the service charges levied on all their customers were "wages" under the Central Provident Fund Act (Cap. 121), i.e. remuneration in money due or granted to them in respect of their employment and if so whether the applicants were liable to make central provident fund contributions on such payments.

Held: the monies in question which were deployed out of funds collected by service charges by the applicants and paid out to the employees on a points or share system did not represent monies of which the applicants were mere trustees or collecting agents for their employees. They were monies demanded from clients and they accrued to hotel revenue